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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/408,634	09/30/1999	MARK WISNIEWSKI	AVERP2514USA	4276

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EXAMINER	
HYLTON, ROBIN ANNETTE	
ART UNIT	**PAPER NUMBER**
3727	

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/408,634	Applicant(s) WISNIEWSKI ET AL.
	Examiner Robin A. Hylton	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 April 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17 and 20-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17 and 20-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *16* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

The papers filed on April 15, 2002 have not been made part of the permanent records of the United States Patent and Trademark Office (Office) for this application (37 CFR 1.52(a)) because of damage from the United States Postal Service irradiation process. The above-identified papers, however, were not so damaged as to preclude the USPTO from making a legible copy of such papers. Therefore, the Office has made a copy of these papers, substituted them for the originals in the file, and stamped that copy:

COPY OF PAPERS
ORIGINALLY FILED

If applicant wants to review the accuracy of the Office's copy of such papers, applicant may either inspect the application (37 CFR 1.14(d)) or may request a copy of the Office's records of such papers (*i.e.*, a copy of the copy made by the Office) from the Office of Public Records for the fee specified in 37 CFR 1.19(b)(4). Please do **not** call the Technology Center's Customer Service Center to inquiry about the completeness or accuracy of Office's copy of the above-identified papers, as the Technology Center's Customer Service Center will **not** be able to provide this service.

If applicant does not consider the Office's copy of such papers to be accurate, applicant must provide a copy of the above-identified papers (except for any U.S. or foreign patent documents submitted with the above-identified papers) with a statement that such copy is a complete and accurate copy of the originally submitted documents. If applicant provides such a copy of the above-identified papers and statement within **THREE MONTHS** of the mail date of this Office action, the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office. Otherwise, the Office's copy will be used as the permanent Office record of the above-identified papers (*i.e.*, the Office will use the copy of the above-identified papers made by the Office for examination and all other purposes). This three-month period is not extendable.

Claim Rejections - 35 USC § 112

1. Claims 1-17 and 20-22 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a closure having two laminated layers peelably attached to each other and each having an adhesive layer and a protective liner there over, does not reasonably provide enablement for a closure having two peelably attached layers, each having a bonded area and a non-bonded area. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention

commensurate in scope with these claims. The structure of the claims does not enable one skilled in the art to provide a multi-layer laminate having first and second layers, each layer having a bonded edge and a non-bonded edge, to secure a container. The claims do not set forth a relationship between the surfaces of the layers and the bonded and non-bonded edges to allow for securing a container.

2. Claims 1-17,20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The structure of the claims is not clearly set forth in the claims. It is unclear where the bonded and non-bonded edges are in relation to the upper and lower surfaces.

Claims 15 and 20 recite the limitation "the force of the container contents". There is insufficient antecedent basis for this limitation in the claims. It is suggested "a force of the container contents" be substituted for the phrase in the claims.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,3-8,10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim of U.S. Patent No. 4,925,714. Although the conflicting claims are not identical, they are not patentably distinct from each other because each discloses an article having a first layer **11** and a second layer **12** of different polymeric films peelably attached together, a bonded edge **23** and **25**, respectively, extending along the length of each layer comprising adhesive **20** and **22**, respectively, a non-bonded edge extending along the width of each layer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the laminated structure of the patent to secure an article such that the non-bonded edge is not attached to the article.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Freedman (US 4,925,714).

The structure is considered to be a closure having a first layer **11** and a second layer **12** of different polymeric films peelably attached together, a bonded edge **23** and **25**, respectively,

extending along the length of each layer comprising adhesive **20** and **22**, respectively, a non-bonded edge extending along the width of each layer.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman.

Freedman discloses a range for the peel strength at the separation interface of less than 50 Newtons/meter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the peel strength in the range of 30 to 40 grams per l-inch or 2-inch width at 90° peel, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Freedman is silent regarding specific polymeric film material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any of the known polymeric materials for the film layers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

8. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman.

Freedman disclose a range for the peel strength at the separation interface of less than 50 Newtons/meter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the peel strength in the range of 30 to 40 grams per l-inch or 2-inch width at 90° peel, since it has been held that where the general conditions of a claim

are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Freedman is silent regarding specific polymeric film material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any of the known polymeric materials for the film layers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

9. Claims 1,3-8,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman.

Freedman is silent regarding specific polymeric film material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any of the known polymeric materials for the film layers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Freedman discloses a range for the peel strength at the separation interface of less than 50 Newtons/meter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the peel strength in the range of 30 to 40 grams per l-inch or 2-inch width at 90° peel, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Allowable Subject Matter

10. Claims 2,9,14 may be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first and second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. In view of the outstanding rejections under 35 USC 112, first and second paragraphs above, the patentability of claims 15-17 and 20-22 have not been determined at this time.

Response to Arguments

12. Applicant's arguments filed April 15, 2002 have been fully considered but they are not persuasive.

Regarding applicant's remarks concerning the claimed structure of the instant invention, the examiner asserts the claims do not clearly establish the bonded and non-bonded edges are part of the upper or lower surfaces of the layers. The phrase "at the non-bonded edge" is not a clear recitation of the lower or upper surface containing a non-bonded edge. In view thereof, the rejections under 35 USC 112, 1st and 2nd paragraphs, non-statutory double patenting and 35 USC 102 and 103 are repeated hereinabove.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice

may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

_____

Signature_____

Date_____

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Robin A. Hylton
Patent Examiner
GAU 3727

July 13, 2002

LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700